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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
09/625,249	07/25/00	BERLOWITZ	JNP-0007

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EXAMINER
MEDLEY, M

ART UNIT	PAPER NUMBER
1714	3

DATE MAILED: 03/05/01

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Office Action Summary

Application No.

89/625249

Applicant(s)

BERLOWITZ et al

Examiner

MEDLEY

Group Art Unit

1714

—The MAILING DATE of this communication appears on the cover sheet beneath the correspondence address—

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE Three MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, such period shall, by default, expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).

Status

- ☐ Responsive to communication(s) filed on _____.
- ☐ This action is **FINAL**.
- ☐ Since this application is in condition for allowance except for formal matters, **prosecution as to the merits is closed** in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 1 1; 453 O.G. 213.

Disposition of Claims

- ☒ Claim(s) 1-9 is/are pending in the application.
- Of the above claim(s) _____ is/are withdrawn from consideration.
- ☐ Claim(s) _____ is/are allowed.
- ☒ Claim(s) 1-9 is/are rejected.
- ☐ Claim(s) _____ is/are objected to.
- ☐ Claim(s) _____ are subject to restriction or election requirement.

Application Papers

- ☐ See the attached Notice of Draftsperson's Patent Drawing Review, PTO-948.
- ☐ The proposed drawing correction, filed on _____ is ☐ approved ☐ disapproved.
- ☐ The drawing(s) filed on _____ is/are objected to by the Examiner.
- ☐ The specification is objected to by the Examiner.
- ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. § 119 (a)-(d)

- ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d).
 - ☐ All ☐ Some* ☐ None of the CERTIFIED copies of the priority documents have been received.
 - ☐ received in Application No. (Series Code/Serial Number) _____.
 - ☐ received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

*Certified copies not received: _____

Attachment(s)

- ☒ Information Disclosure Statement(s), PTO-1449, Paper No(s) 2
- ☒ Notice of Reference(s) Cited, PTO-892
- ☐ Notice of Draftsperson's Patent Drawing Review, PTO-948
- ☐ Interview Summary, PTO-413
- ☐ Notice of Informal Patent Application, PTO-152
- ☐ Other _____

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DETAILED ACTION

Applicants are required to amend page 1 of the instant application to reflect that this instant application is a continuation of 09/138,130 dated August 21, 1998 and to update the status of the said parent application .

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 (and its dependent claims) is indefinite for (a) F-T...fraction" and (b) virgin distillate... fraction" for failing to disclose the relative proportion of (a) to (b), the boiling range of (a) and of (b) and the chemically and physical characteristics of (a) and (b) for the contents of the S, N, aromatic, paraffins, naphthene, etc. Claims 8 and 9 are further indefinite for "petroleum derived distillate" and because it is unclear how the "virgin distillate" differs from the "petroleum derived distillate" and for failing to recite the relative proportion for the "petroleum distillate.

A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

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A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

Claims 1-9 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-6 of copending Application No. 09/138,130. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claim subject matter comprising F-T fractions and virgin distillates are the same subject matter and are not patentably distinct.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-9 rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-2 of U.S. Patent No. 5,689,031. Although the conflicting claims are not identical, they are not patentably distinct from each other because the blend material composition of the instant application containing (b) a virgin distillate is not excluded from patentees distillate fraction with the open-ended language "containing" ..

Claims 1-9 rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-3 of U.S. Patent No. 5,766,274. Although the conflicting claims are not identical, they are not patentably distinct from each other because the blend material composition of the instant application containing (b) a virgin distillate is not excluded from patentees material useful as a jet fuel or as a blending component for a jet fuel.

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Claims 1-9 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-4 of copending Application No. 09/464/179. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claimed blended material of the instant application overlaps the blended material of copending application 09/464,179.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-9 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-2, 4, and 15-19 of copending Application No. 08/971,254. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claimed blended material of the instant application overlaps the blended fuel of copending application 08/971,254.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claims 1-9 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-9 of U.S. Patent No. 5,807,413. Although the conflicting claims are not identical, they are not patentably distinct from each other because the instant application claimed blended material containing (b) a virgin distillate is not excluded from patentees material containing the open-ended language "comprising".

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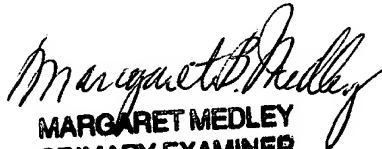
Applicants are required to make of record all related applications and patentees to the instant applications and to indicate their lines of demarcation and the pending status of the applications and patentees.

The prior art made of record and not relied upon further teach fuel blends of the same nature as claimed by applicants.

Any inquiry concerning this communication should be directed to Margaret B. Medley at telephone number (703) 308-2518.

Vhardy

02/26/01


MARGARET MEDLEY
PRIMARY EXAMINER